

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-0626V

Filed: November 30, 2018

UNPUBLISHED

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MARY HAVENER,

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Petitioner,

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v.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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Attorneys' Fees and Costs; Stipulation  
Special Processing Unit ("SPU")

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*Braden Andrew Blumenstiel, Blumenstiel Falvo, LLC, Dublin, OH, for petitioner.*

*Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION ON ATTORNEYS' FEES AND COSTS<sup>1</sup>**

**Dorsey**, Chief Special Master:

On May 9, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act"). Petitioner alleges that she suffered a shoulder injury related to vaccine administration ("SIRVA") following a tetanus, diphtheria, acellular pertussis ("Tdap") vaccination. Petition at 1. On June 1, 2018, the undersigned issued a decision awarding compensation to petitioner based on the respondent's proffer. ECF No. 31.

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<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims' website.

**This means the decision will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On May 31, 2018, respondent file a proffer agreeing to an award of \$5,432.57 in attorneys' fees and costs. In accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses. ECF No. 30 at 2.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300 aa-15(e). Based on the reasonableness of petitioner's request and the lack of any objection by respondent, the undersigned **GRANTS** the request for approval and payment of attorneys' fees and costs.

**Accordingly, the undersigned awards the total of \$5,432.57<sup>3</sup> as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Braden Andrew Blumenstiel.**

The clerk of the court shall enter judgment in accordance herewith.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.